Throughout the quarter of a century I have been privileged and had the honor of representing the Commonwealth of Virginia in the Senate, I have conscientiously in each of those years under all of the Presidents I have served with made the effort to work on judicial nominations in a fair and objective way, recognizing the doctrine of checks and balances and the coequal authority of the two branches.

Whether our President was President Carter, President Ronald Reagan, President George Bush, President Clinton, or President George W. Bush, I have been privileged to accord equal weight to the nominations of all Presidents, irrespective of party. I have done so because of my belief that if the concept of equal power sharing and the concept of checks and balances was lost in the judicial confirmation process, then we may ultimately discourage many highly qualified men and women nominees from offering to serve in our judiciary.

Certainly each Senator is entitled to vote for or against a particular nominee for any reason he or she deems important. And it is clear our Framers did not intend the Senate's role in the advice and consent process to be a rubberstamp. No one is suggesting that. Exercise your authority. Exercise your judgment. Do it fairly. Do it consistently with the doctrine of checks and balances inherent in the Constitution.

This much is evident from history. Soon after the Constitution was ratified, the Senate rejected a nomination put forward by our first President, our founding father, George Washington.

President Washington nominated John Rutledge to serve on the U.S. Supreme Court. Even though Mr. Rutledge had previously served as a delegate to the Constitutional Convention, the Senate rejected his nomination. It is interesting to note many of those Senators who voted against the Rutledge nomination were also delegates to the Constitutional Convention.

The key differences between the Rutledge nomination of over 200 years ago and the Estrada nomination of today is that Mr. Rutledge received an up-or-down vote. A simple majority controlled. The early Members of our Senate, some of whom participated in the Constitutional Convention, allowed an up-or-down vote on Mr. Rutledge even though they opposed him.

On the other hand, Mr. Estrada has not received a vote and he is being subjected to a filibuster-proof majority for confirmation.

Our Founding Fathers, I say to my colleagues, were not so prudent of the requirement for the 60 votes.

Mr. Estrada is being opposed simply because of his political ideology. In the view of this Senator we ought to accord equal weight to a President's nominees, irrespective of party. I have tried to abide by this principle throughout my 25 years in the U.S. Senate.

For example, in the 106th Congress and the 107th Congress, I was honored to support the nomination of Roger Gregory. Judge Gregory was originally nominated by President Clinton and he was supported by Virginia's former Democratic Governor Doug Wilder.

Regardless of political ideologies, and regardless of which President nominated him, Judge Gregory was highly qualified to sit on the bench. We are fortunate to have him on the United States Court of Appeals for the Fourth Circuit. Judge Gregory is now the first African American Judge to ever serve on the United States Court of Appeals for the Fourth Circuit, and he is serving with distinction.

Judge Gregory's qualifications were clear cut. Regardless of which President nominated him, he deserved the support of the United States Senate.

Like Judge Gregory, Miguel Estrada's nomination is also a clear-cut case.

Mr. Estrada has received a unanimous ranking of ''well qualified'' by the American Bar Association. In my view, his record indicates that he will serve as an excellent jurist.

Mr. Estrada's resume is an impressive one. Born in Honduras, Miguel Estrada came to the United States at the age of 17. At the time, he was able to speak only a little English. But, just 5 years after he came to the United States, he graduated from Columbia College with Phi Beta Kappa honors.

Three years after he graduated from Columbia, Mr. Estrada graduated from Harvard Law School where he was an editor of the Harvard Law Review.

Mr. Estrada then went onto serve as a law clerk to a Judge on the United States Court of Appeals for the 2nd Circuit and as a law clerk to Judge Kennedy on the United States Supreme Court.

After his clerkships, Mr. Estrada worked as an Assistant United States Attorney, as an assistant to the Solicitor General in the Department of Justice, and in private practice for two prestigious law firms.

Throughout his career, Mr. Estrada has prosecuted numerous cases before federal district courts and federal appeals courts. He has argued 15 cases before the U.S. Supreme Court.

Without a doubt, Mr. Estrada's legal credentials make him well qualified for the position to which he was nominated. I am thankful for his willingness to resume his public service, and I am confident that he would serve as an excellent jurist.

In closing, Mr. President, it is clear to me that the Senate's role in the confirmation process is more than just a mere rubber-stamp of a President's nomination; but it is the Senate's constitutional responsibility to render ''advice and consent'' after a fair process of evaluating a President's nominee. After that process is complete, nominees who emerge from the Judiciary Committee ought to be accorded up or down vote.

Should a Senate rule overrule the Constitutional responsibilities of checks and balances? I think it should not.

Thomas Jefferson once remarked on the independence of our three branches of government by stating, ''The leading principle of our Constitution is the independence of the Legislature, Executive, and Judiciary of Each other.''

I would add that each branch of government must perform its respective responsibilities in a fair and timely manner to ensure that the three branches remain independent.

In my view, we must ask ourselves:

Is the current filibuster of Miguel Estrada's consistent with our country's last 200 plus years since our Constitution was ratified?

Are we fulfilling our constitutional responsibilities to preserve the doctrine of checks and balances?

In my view, we don't want to set a precedent that alters the inherent responsibilities of checks and balances in the judicial confirmation process.

But, these questions are for each Senator to decide upon.

I for one, though, fear the precedent that would be set if the Senate does not support cloture for Miguel Estrada and I fear what it might mean for the future of our Judiciary, and the future of our Republic.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SANTORUM. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the scheduled vote this evening on the Frost nomination now occur at 5:45, provided that debate time from 5 p.m. to 5:45 p.m. be equally divided as under the earlier order.

Mr. REID. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

PARTIAL-BIRTH ABORTION BAN ACT OF 2003

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to consideration of S. 3, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 3) to prohibit the procedure commonly known as partial-birth abortion.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, we are now on a piece of legislation known

as the partial-birth abortion bill. It is a bill we have debated in the Senate in two previous Congresses on four different occasions. We debated it the first time and passed it. It was vetoed by the President, President Clinton at the time, back in 1996. Then we attempted to override the President's veto and fell just a few votes short.

We came back the next session, went through the same process, sent the bill to the President, he vetoed it again, and we came closer but we still failed in overriding the President's veto.

Subsequently, there were a whole series—actually, concurrent with that debate—of States, over half the States in the Union, that passed bans on this horrific partial-birth abortion procedure. That is the procedure where the baby is delivered—this is a baby at over 20 weeks gestation; in other words, halfway through the pregnancy. The gestational period is 40 weeks. This procedure is only performed on babies in utero after 20 weeks. So these are late-term abortions.

The process is as follows: A woman shows up and decides she wants to have an abortion after 20 weeks. A doctor decides to use this methodology. The woman is given a drug to dilate her cervix. She is sent home. Two days later she returns, and the baby is then delivered in a breech position. Under the definition of this act as currently constituted, the baby has to be alive when it is brought in through the birth canal, the baby has to be in a breech position, has to be outside the mother at least past the navel, and be alive. Then the baby is killed in a fashion that I will describe in more detail later.

That procedure, as I said, was banned by over 25 States. It was brought, obviously, to the courts by many in those States. There were a couple of circuit courts that found this to be constitutional, one that did not. The Supreme Court took one of those cases, the Nebraska case that was appealed to the circuit, and made a decision which I think was in error. It was a horrible decision, but a decision I think we need to contemplate here. It is a decision that said that an abortion past 20 weeks of a child that would otherwise be born alive is now encompassed by Roe v. Wade.

You hear a lot of comments about Roe v. Wade, that Roe v. Wade only allows legal abortions within the first trimester and under limited circumstances in the second trimester. These are babies in the second and third trimester, where the courts have basically said, as many of us who have been studying this issue for a long time have said, that there is no limitation on the right to abortion. Abortion is a right that is absolute in America. There are no limitations, as a result of court decisions, on the right to an abortion.

So they held, in this case, that the language of the statute was too vague and that—the description of the procedure was too vague, and that there needed to be a health exception to this procedure; in other words, to preserve the health of the mother.

We have responded to that with a bill we introduced last year, in the last session of Congress. In the last session of Congress, we introduced a piece of legislation in the House that was passed. STEVE CHABOT, at the time chairman of the Constitution Subcommittee on the Judiciary Committee, passed a piece of legislation in the House that banned this procedure. It is identical to the bill that is on the floor today. We asked for its consideration last year.

I came to the floor on a couple of occasions and asked for unanimous consent to bring this bill forward. I agreed to debate it on Fridays and Mondays, so as not to interrupt the rest of the Senate's schedule, I agreed to stay on the weekend if that was necessary so we could deal with amendments. Unfortunately, even though the bill passed in July of last year, it was not scheduled here on the Senate floor for debate and for passage—for action.

That is why I believe this is unfinished business from last year and one of the reasons I advocated for its early consideration this year. I thank our leader, Senator FRIST, for his willingness to bring this bill to the floor promptly, for us to be able to have this debate, to look at the issues involved with respect to this issue.

We believe the issues the Supreme Court brought up with respect to the infirmities in the Nebraska statute have been addressed by this legislation. First, we have gone into much greater detail in describing this procedure, and either later tonight or tomorrow I will read the text of the bill and I will provide graphic illustration as to how this procedure is conducted.

Second, we dealt with the issue of health. Roe v. Wade requires a health exception when the health of the mother is potentially in danger. We have included in this legislation a voluminous amount of material that shows clearly, without dispute, in my mind—without dispute, period, not just in my mind—without any medical dispute, that there are no reasons this procedure has to be available for the health of the mother because there are no instances in which this procedure is required for the health of the mother. There is no medical organization out there that believes that to be the case.

While some do not support the legislation or have a neutral position, nobody has come forward and said this is medically necessary to protect the health of the mother, much less, by the way, the life of the mother.

So, since there is no reason for a health exception because there are no instances where a health exception is needed, then Roe does not apply. So we have laid that out very clearly in this legislation. We believe as a result of that, Congress has the right—because we do a heck of a lot more exhaustive study, in our deliberations with hearings and other testimony, than the Supreme Court can. They have to rely on the record of the lower court and the arguments made to that lower court.

In the case of Nebraska, frankly, the arguments were not particularly well put and the evidence was not particularly robust for either side. It was a very weak record, and the court made a decision based on that record. They will have a different record before them in this case when it is brought up to the court, and I believe the record will be clear and dispositive that no health exception is necessary. We have dealt with the constitutional issues. Now we are back to the focus of this legislation. Do you want to allow a horrific procedure that is not medically necessary, never medically indicated, not taught in any medical school in this country, not recommended, and which, in fact, major health organizations of this country have said is bad medicine, contra-indicated, that is so brutal in the way it is administered to a baby that otherwise would be born alive?

Let me emphasize that it is a baby fetus—some will refer to it as the child in utero—that would otherwise be born alive. You don't want to allow this child to be brutally killed by thrusting a pair of scissors into the back of its skull and suctioning its brains out.

This goes on in America thousands of times a year. The number of partial-birth abortions has tripled, according to the abortion industry that doesn't keep very good records. They admit that. It has tripled, they say, to 2,200. Oddly enough, back in 1997 when we were debating this, the Bergen County Record took the bother of asking the local abortion clinic how many they did just in Bergen County. The partial-birth abortion national number at that time was 600. In Bergen County, they did 1,500. I guess they dismissed that.

The bottom line is that this goes on an enormous amount of times and they call it a rare procedure. If we had a procedure that killed 2,200 children in America every single year, we would not be saying it is a rare procedure in America. If we had a disease that affected 2,200 little babies every year, we wouldn't say this is a rare thing when we know, by the way, that the number is multiples of that. The people we have to rely on for that information are the people who want this to be legal and who don't tell us about the abortions they perform.

This is something that needs to be done. I am hopeful that we can deal with this issue in an expeditious fashion, get this over in the House of Representatives and have them pass it, and have the President sign it, because he will sign it.

I think there is broad bipartisan support for this legislation as there has been in the past. It is overwhelmingly supported by the American people. A very large majority support this legislation. Even those who do not consider themselves pro-life believe that at

some point we have to draw the line on the brutal killing of a child literally inches from constitutional protection—inches from being born and being completely separated from the mother, being held in the birth canal and executed, having scissors thrust into the base of its skull and then to have a suction catheter inserted and the ''cranial content'' removed.

Just to describe it here sends chills down your back. Yet people will defend this procedure and say that a civilized nation such as America believes this is proper medicine. Medicine, healing? I, frankly, don't know who is healed in that situation. I do not know who is protected in that situation when every credible medical core organization says it is not medically necessary; in fact, it is ''bad medicine,'' and it is harmful to the woman. I have just described how harmful it is to the little child.

I ask my colleagues to join me in passing this piece of legislation and ending this outrageous procedure.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. TALENT). The Senator from California.

Mrs. BOXER. Mr. President, could you advise me when I have used 9 minutes.

The PRESIDING OFFICER. The Chair will so advise.

Mrs. BOXER. I thank the Chair.

Mr. President, there have been so many misstatements made on this floor right now in just a few minutes that I don't know where to start.

Why don't I start with the whole point that we have made over and over again. We are Senators. We are not doctors. With all due respect to my friend from Pennsylvania, if my daughter were in trouble with pregnancy, I wouldn't go to him. I would go to her OB-GYN. And I would say, Tell us what do we have to do to make sure this birth goes well, and tell us what we have to do to make sure our daughter's life will not end and that her health will not be impaired forever. I would not go to the Senator from Pennsylvania in that circumstance.

There are many arguments that we will lay out. Today, we only have a few very short minutes. Senator MURRAY and I are going to share the time. We have a number of amendments that we are going to offer during this week to talk about what we think is very important for women's health, and, frankly, the health of their families and their children.

This bill, S. 3, is called the Partial-Birth Abortion Ban Act. It should be called the following: The ''Criminalizing Medically Necessary Procedures Act,'' because the procedures that are banned are necessary to save the life and the health of a woman facing a medical emergency during a pregnancy.

My friend from Pennsylvania makes light of it. Oh, this doesn't hurt women. This is fine for women. Let me tell you who agrees with us and who disagrees with the Senator from Pennsylvania.

To start, I have a letter that I ask unanimous consent be printed in the RECORD from Physicians for Reproductive Choice and Health.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MARCH 10, 2003.

Hon. BARBARA BOXER,
U.S. Senate,
Washington, DC.

DEAR SENATOR BOXER: We are writing to urge you to stand in defense of women's reproductive health and vote against S. 3, legislation regarding so-called ''partial birth'' abortion.

We are practicing obstetrician-gynecologists, and academics in obstetrics, gynecology and women's health. We believe it is imperative that those who perform terminations and manage the pre- and post-operative care of women receiving abortions are given a voice in a debate that has largely ignored the two groups whose lives would be most affected by this legislation: physicians and patients.

It is misguided and unprincipled for lawmakers to legislate medicine. We all want safe and effective medical procedures for women; on that there is no dispute. However, the business of medicine is not always palatable to those who do not practice it on a regular basis. The description of a number of procedures—from liposuction to cardiac surgery—may seem distasteful to some, and even repugnant to others. When physicians analyze and debate surgical techniques among themselves, it is always for the best interest of the patient. Abortion is proven to be one of the safest procedures in medicine, significantly safer than childbirth, and in fact has saved numerous women's lives.

While we can argue as to why this legislation is dangerous, deceptive and unconstitutional—and it is—the fact of the matter is that the text of the bill is so vague and misleading that there is a great need to correct the misconceptions around abortion safety and technique. It is wrong to assume that a specific procedure is never needed; what is required is the safest option for the patient, and that varies from case to case.

THE FACTS

(1) So-called ''partial birth'' abortion does not exist.

There is no mention of the term ''partial birth'' abortion in any medical literature. Physicians are never taught a technique called ''partial birth'' abortion and therefore are unable to medically define the procedure.

What is described in the legislation, however, could ban all abortions. ''What this bill describes, albeit in non-medical terms, can be interpreted as any abortion,'' stated one of our physician members. ''Medicine is an art as much as it is a science; although there is a standard of care, each procedure—and indeed each woman—is different. The wording here could apply to any patient.'' The bill's language is too vague to be useful; in fact, it is so vague as to be harmful. It is intentionally unclear and deceptive.

2) Physicians need to have all medical options available in order to provide the best medical care possible.

Tying the hands of physicians endangers the health of patients. It is unethical and dangerous for legislators to dictate specific surgical procedures. Until a surgeon examines the patient, she does not necessarily know which technique or procedure would be in the patient's best interest. Banning procedures puts women's health at risk.

3) Politicians should not legislate medicine.

To do so would violate the sanctity and legality of the physician-patient relationship. The right to have an abortion is constitutionally-protected. To falsify scientific evidence in an attempt to deny women that right is unconscionable and dangerous.

The American College of Obstetricians and Gynecology, representing 45,000 ob-gyns, agrees: ''The intervention of legislative bodies into medical decisionmaking is inappropriate, ill advised, and dangerous.''

The American Medical Women's Association, representing 10,000 female physicians, is opposed to an abortion ban because it ''represents a serious impingement on the rights of physicians to determine appropriate medical management for individual patients.''

THE SCIENCE

We know that there is no such technique as ''partial birth'' abortion, and we believe this legislation is a thinly-veiled attempt to outlaw all abortions. Those supporting this legislation seem to want to confuse both legislators and the public about which abortion procedures are actually used. Since the greatest confusion seems to center around techniques that are used in the second and third trimesters, we will address those: dilation and evacuation (D&E), dilation and extraction (D&X), instillation, hysterectomy and hysterotomy (commonly known as a c-section).

Dilation and evacuation (D&E) is the standard approach for second-trimester abortions. The only difference between a D&E and a more common, first-trimester vacuum aspiration is that the cervix must be further dilated. Morbidity and mortality studies indicate that this surgical method is preferable to labor induction methods (instillation), hysterotomy and hysterectomy.

From the years 1972–76, labor induction procedures carried a maternal mortality rate of 16.5 (note: all numbers listed are out of 100,000); corresponding rate for D&E was 10.4. From 1977–82, labor induction fell to 6.8, but D&E dropped to 3.3. From 1983–87, induction methods had a 3.5 mortality rate, while D&E fell to 2.9. Although the difference between the methods shrank by the mid-1980s, the use of D&E had already quickly outpaced induction, thus altering the size of the sample.

Morbidity trends indicate that dilation and evacuation is much safer than labor induction procedures, and for women with certain medical conditions, e.g., coronary artery disease or asthma, labor induction can pose serious risks. Rates of major complications from labor induction were more than twice as high as those from D&E. There are instances of women who, after having failed induction, acquired infections necessitating emergency D&Es, which ultimately saved her fertility and, in some instances, her life. Hysterotomy and hysterectomy, moreover, carry a mortality rate seven times that of induction techniques and ten times that of D&E.

There is a psychological component which makes D&E preferable to labor induction; undergoing difficult, expensive and painful labor for up to two days is extremely emotionally and psychologically draining, much more so than a surgical procedure that can be done in a few hours under general or local anesthesia. Furthermore, labor induction does not always work: Between 15 and 30 percent of cases require surgery to complete the procedure. There is no question that D&E is the safest method of second-trimester abortion.

There is also a technique known as dilation and extraction (D&X). D&X is merely a variant of D&E. There is a dearth of data on D&X as it is an uncommon procedure. However, it is sometimes a physician's preferred

method of termination for a number of reasons: it offers a woman a chance to see the intact outcome of a desired pregnancy, thus speeding up the grieving process; it provides a greater chance of acquiring valuable information regarding hereditary illness or fetal anomaly; and there is a decreased risk of injury to the woman, as the procedure is quicker than induction and involves less use of sharp instruments in the uterus, providing a lesser chance of uterine perforations or tears and cervical lacerations.

It is important to note that these procedures are used at varying gestational ages. Neither a D&E nor a D&X is equivalent to a late-term abortion. D&E and D&X are used solely based on the size of the fetus, the health of the woman, and the physician's judgment, and the decision regarding which procedure to use is done on a case-by-case basis.

THE LEGISLATION

Because this legislation is so vague, it would outlaw D&E and D&X (and arguably techniques used in the first-trimester). Indeed, the Congressional findingsl—which go into detail, albeit in non-medical terms—do not remotely correlate with the language of the bill. This legislation is reckless. The outcome of its passage would undoubtedly be countless deaths and *irreversible damage* to thousands of women and families. We can safely assert that without D&E and D&X, that is, an enactment of S.3, we will be returning to the days when an unwanted pregnancy led women to death through illegal and unsafe procedures, self-inflicted abortions, uncontrollable infections and suicide.

The cadre of physicians who provide abortions should be honored, not vilified. They are heroes to millions of women, offering the opportunity of choice and freedom. We urge you to consider scientific data rather than partisan rhetoric when voting on such far-reaching public health legislation. We strongly oppose legislation intended to ban so-called ''partial birth'' abortion.

Sincerely,

NATALIE E. ROCHE, MD,
Assistant Professor of Obstetrics and Gynecology,
New Jersey Medical College.
GERSON WEISS, MD,
Professor and Chair, Department of Obstetrics, Gynecology and Women's Health,
New Jersey Medical College.

Mrs. BOXER. Mr. President, in fact, they say the so-called partial-birth abortion does not exist. There is no mention of the term ''partial-birth abortion'' in any medical literature.

Let me say once again for my colleagues that there is no mention of the term ''partial-birth abortion'' in any medical literature. Physicians are never taught a technique called partial-birth abortion and, therefore, are unable to medically define the procedure.

These physicians who are charged with protecting the life and health of women and babies—I might add that what is described in the legislation could ban all abortions. What this bill describes can be interpreted as any abortion.

We have a bill called the Partial-Birth Abortion Ban Act, and there is no such thing as partial-birth abortions. What this does is criminalize a medically necessary procedure. So let us get that on the table.

Why then would this be before us? I think the answer lies in this letter from OB–GYNs. It is an attempt to outlaw all abortions, to take away the rights of women to choose—not only to chip away at that right, but to take it away, and, by the way, criminalize abortions.

What follows from that? Women and doctors will be in jail. That is what follows from that. And if you read behind and between the lines here, when you hear my colleagues stand up, they have been fighting all their lives to outlaw abortion and to overturn Roe v. Wade. So let us get it on the table. That is what this is about.

There is a further quote in this letter that I think is worth mentioning.

The American College of Obstetricians and Gynecology, representing 45,000 OB–GYNs, agrees: ''The intervention of legislative bodies into medical decision-making is inappropriate, ill-advised and dangerous.''

Let me repeat that. These are the doctors who birth our children.

I find it very interesting because a lot of men come out here and talk about this, and women who have had pregnancies, who understand the relationship that you develop with your doctor—your doctor is your friend. Your doctor advises you. Your doctor tells you what your risks are. Your doctor, more than anything, wants a healthy child to be the end result of a pregnancy. That is why they go into medicine. People here would put them in jail if they tried to save your life by using a procedure that they know is the safest one in an emergency.

So repeating:

The American College of Obstetricians and Gynecology, representing 45,000 ob-gyn's, [says]: ''The intervention of legislative bodies into medical decision making is inappropriate, ill advised, and dangerous.''

The American Medical Women's Association, women who go into healing—women who go into healing—what do they say, 10,000 female physicians? They are opposed to this ban because it ''represents a serious impingement on the rights of physicians to determine appropriate medical management for individual patients.''

So here we are, with everything else happening in the world, playing doctor—playing doctor—and putting women's lives at risk. It is very upsetting.

I go home every weekend. That is why I could not begin this debate on Saturday because I go home and I listen to my constituents. They come up to me—as I know my friend from Washington goes home every weekend—and they tug at my sleeve. Do you know what they are saying to me? Not ban medical procedures that doctors think might be necessary to save the life and health of a woman, no.

They are saying: Senator BOXER, we are worried. We have 250,000 troops ready to go to war. We are worried. Can we avoid war? We are worried. We are losing our retirement nest eggs. We are worried. We have lost our jobs.

I have a chart in the Chamber to just put this into context; that we are standing here debating a procedure that, if you take the definition of D&X, impacts one-tenth of 1 percent of all abortions. I do not happen to agree that is what the bill does, but let's take the advocates' point of view. They say it is this D&X, and that is one-tenth of 1 percent of all abortions, when these are the things people want us to work on:

In the last 2 years, 2.5 million private-sector jobs have disappeared. And I know some of those families. And 8.5 million people are unemployed in the United States of America; 1.1 million in California.

The PRESIDING OFFICER. Will the Senator suspend. The Chair advises the Senator she has used 9 minutes.

Mrs. BOXER. Thank you, Mr. President. I will continue. Will the Chair let me know when I have used 11 minutes, please?

The PRESIDING OFFICER. Will the Senator let us know, do you want us to let you know when you have used 11 more minutes or 2 more minutes?

Mrs. BOXER. Two additional minutes, and then I intend to yield back to my friend. And then Senator MURRAY will seek recognition.

The PRESIDING OFFICER. The Chair will advise the Senator when she has used 2 additional minutes.

The PRESIDING OFFICER. I thank the Chair.

Mrs. BOXER. Mr. President, people are unemployed. Mortgage foreclosures have reached a record high. Forty-one million Americans have no health insurance—no health insurance—whatsoever. Nine million children do not have health insurance coverage; 1.6 million children in California have no coverage.

Over 15 million Medicare beneficiaries have no prescription drug coverage. And 1.5 million violent crimes were reported in the U.S. in 2001. The crime rate is going up again, along with the unemployment rate.

We are talking about banning a medical procedure—or more than one, because the Supreme Court, by the way, in its ruling, claims the wording actually bans more than one procedure—we are doing that instead of this.

Mr. President, 13.5 million eligible children do not have child care assistance. And 280,000 children in California are on waiting lists to receive assistance.

There is a lot of passion about kids here. I share the passion. I share the love. I share the anxiety for those children. Let's do something to help them.

Mr. President, 15 million children have no access to afterschool programs, and the President cut the afterschool program by 40 percent.

One million children live within 1 mile of a toxic Superfund site, and the Superfund is in danger, and Superfund

cleanups are now cut in half. Talk about how it affects children. Why don't we do our job instead of trying to be doctors? If we do our job, we will have healthy children, get the parents health insurance, and the rest.

Mr. President, 17 million Americans have asthma; 6 million are children. I will tell you, if you go to any school and ask the kids to raise their hand, a third of them will say they have had asthma.

And 11.6 million children are living in poverty.

Mr. President, I ask for 30 more seconds, and then I will stop.

Bottom line: We are here in a situation where we are making a decision that is going to harm women. And through this debate I will show you the real faces of the women who have had this procedure. Some are very religious Catholics. Some are very conservative Republicans. And they are fighting against this with all their heart.

So I do look forward to this debate because, frankly, if we can take this love we all share for children and put it to good use for all of these things I have talked about, maybe something good will come out of it.

I thank the Chair very much and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Mr. President, the Senator from California suggested this procedure may be the safest one in the case of an emergency. I do not have a medical degree, but I do have common sense. I cannot imagine that any doctor, faced with an emergency such as preeclampsia, or any other kind of emergency to the health of the mother, would give a woman a pill and send her home for 2 days and say: Come back to me in 2 days so I can abort your child. And that is exactly what the Senator from California would suggest is necessary in the case of an emergency.

Now, again, I do not have a medical degree. I agree with that. There will be a physician who does have a medical degree who will be here during this debate who will give you his opinion. That is our leader. But there is no way this procedure would ever be used in the case of an emergency. It is a 3-day procedure.

You ask the doctors. I do not know whether the Senator from California did. Ask the doctor who designed this procedure. And it was asked, in hearing after hearing after hearing, and letters. The doctor said he did this for his convenience because it took him 45 minutes to do your average late-term abortion, but the partial-birth abortion only took 15 minutes—15 minutes after 2 days of the mother being home having her cervix dilated over time. So, please.

And, by the way, I have had this conversation many times on this floor, where I have laid out very clearly this will never be used in the case of an emergency. You will find nothing anybody with a medical degree has ever written that says this will ever be used in the case of an emergency. But it does not fail that someone will come up and say: Well, you have to have this just in case of an emergency. You will never use this in the case of an emergency to protect a woman's health, life, or anything else. So let's just, if we can, try to stipulate to some facts, No. 1.

No. 2, the Senator from California said this may be a medically necessary procedure to save the health of the mother. That is a statement I have heard numerous times. She was reading from some letter, which I am going to be anxious to read because I have not seen it. But for the past 7 years, for anybody who has questioned this procedure, I have asked one question: Give me a for instance. Give me one example where this procedure, which is not taught in medical schools, which is not done in hospitals—let me repeat this—not done in hospitals; it is done in abortion clinics, designed by abortionists—tell me, under what circumstances would this be a preferable medical procedure?

Never—I underscore never—have I gotten a response. Why? Because there isn't an answer, other than never.

Yet it doesn't dissuade anybody from coming here for years and repeating the same line. Oh, we may need this. This may be medically necessary. Give me a for instance—just one. Give me one. Never—not once, ever—has someone come here and given a for instance of when this was medically necessary to preserve health, life, or anything. So I ask the Senator from California, who has exited the floor, to give me an example. I have been asking for years. I am a patient man.

Finally, she talks about how we are not doctors and we should not be here regulating medical procedures. I ask the Senator from California if she was a sponsor of a bill in which Congress banned, in 1996, a procedure known as female genital mutilation. I believe the Senator supported that legislation, as did I. It banned a medical procedure. I don't think the Senator from California came here and said we should not ban this procedure because we are not doctors. But we did ban that procedure.

By the way, is the procedure in the medical literature known as female genital mutilation? Answer: No. That is what Congress called it. Does Congress have a right to label things what we want? Answer: Yes. It may be more descriptive and real in describing what goes on than the medical term, which is mumbo jumbo in some cases to us lay people. So the medical term for female genital mutilation is infibulation.

If we came here and said we were going to ban that, everybody would look at me like I am looking at that word—having no familiarity with it. So we put it into plain language. Why? Because our job is to describe what we are doing. We don't want to keep secrets. We do enough of that. We want to accurately describe what is going on.

The Senator from California voted to ban a medical procedure that was named in the legislation differently than the ''technical name'' used in medicine—the very argument she is making against this legislation. Not that we have to be consistent in the Senate, but I suggest if you are going to make arguments about what we are doing here, don't do it from a glass-house. That is what the Senator from California is doing. I see a lot of broken glass on the floor.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Washington is recognized.

Mrs. MURRAY. Mr. President, how much time do I have?

The PRESIDING OFFICER. Nine minutes.

Mrs. MURRAY. I yield myself 9 minutes.

Mr. President, I am dismayed and outraged that as we stand on the brink of war, as a quarter million of our finest soldiers gather in the Persian Gulf, the Senate is here this week discussing how to criminalize women's health choices. That is outrageous. I cannot believe the Senate leadership can find no more pressing national issue for the Senate to consider right now than abortion.

I cannot believe my colleagues are so out of touch with what is going on in America and the world that we should be debating this bill, S. 3. For anyone who hasn't had time to read a newspaper or talk to a constituent in the last week, I will read you some of the headlines. It will help demonstrate what else we are not doing right now.

This is from Friday's New York Times. Headline: ''U.S. Payrolls Fall Sharply as Jobless Rate Rises to 5.8 Percent.''

Employers shed more jobs last month at any time since the immediate aftermath of the September 11 terrorist attacks, the Labor Department reported today.

Saturday's Washington Post is even more alarming.

. . . [T]he report showed significant declines in a wide range of industries, including manufacturing, construction, retail trade, transportation, and some service.

How about this revelation: ''Chronic Budget Deficits Forecast,'' says the Washington Post.

The Federal Government . . . faces chronic deficits that only dramatic policy shifts can reverse. . . . Altogether, the CBO concluded, the President's policies would leave the Government with $2.7 trillion in debt through 2013, which the Government would not realize if Bush's proposals were rejected.

The Associated Press reported on Thursday that the Dow Jones fell to a 5-month low. If it drops 400 more points, it will hit a 5-year low.

On Wednesday, we learned that ''75 million Americans had no health insurance in 2001–02.''

Today, the New York Times reported, ''More Students Line Up at Financial Aid Offices.''

As the economic slump wears on, universities are awash in financial aid requests that dwarf those of earlier years, often from students who never thought of asking for help before and now find themselves scrambling for ways to stay in school.

On Saturday, the AP reported:

The Air Force Chief of Staff vowed to make the Air Force Academy safer for female cadets. The Air Force says it has investigated 54 reports of sexual assault since the academy began admitting women in 1976. Many of the alleged victims have said they were afraid to report the attacks because they feared they would be reprimanded.

Mr. President, this is a terrible situation. I commend Senators ALLARD and WARNER for their leadership in working to address that problem.

Unfortunately, the news overseas is no better than the news at home. The New York Times reported: ''North Korean Fliers Said To Have Sought Hostages.''

The North Korean fighter jets that intercepted an unarmed American sky plane over the Sea of Japan last weekend were trying to force the aircraft to land in North Korea and seize its crew, a senior defense official said today.

Today's Washington Post reports that ''Iran's Nuclear Program Speeds Ahead; Making ''Startling' Progress.''

U.S. officials . . . described Iran's progress last week as ''startling'' and ''eye-opening,'' so much so that intelligence agencies are being forced to dramatically shorten estimates for when Iran may acquire nuclear weapons. But equally striking is the extent to which Iran's breakthrough caught the United States and others by surprise.

Mr. President, these are the issues that I hear about when I am home in my State at the grocery store on Saturday morning. My constituents are terribly concerned about the economy, their jobs, their health care—or their lack of a job or health care. They ask about the war in Iraq and the threat posed by North Korea. My constituents have a vested interest in resolving the North Korean crisis, as do the Senators from California, since they have read news reports that the Western United States is potentially within range of a North Korean missile.

We are living in very trying times. It is challenges like these that test the strength of a nation and its leaders. But for the good of the country, shouldn't we now, more than ever, put aside the wedge politics and get on with the real business of the American people? That is what they elected us to do. That is why each one of us is here today.

Instead, we find ourselves on the eve of war facing a stagnant economy and the Senate is here debating a woman's right to choose.

Someone just tuning into C–SPAN right now might think this debate is taking place on another planet because it is dangerously out of sync with the real threats that are facing our Nation. It shows that nothing—not war, not the stagnant economy—will stop hardliners in Congress from trying to appease their political base by pushing an unconstitutional, deceptive, extreme agenda on American women.

But do you know what? If the Senate leadership wants to debate abortion on the eve of war, fine, bring it on, because it is time the American people see that they are using deceptive examples and misleading information to impose extreme, unconstitutional restrictions on a woman's health decision.

Throughout this debate, I want to show that the Republican proposal is based on misinformation and is skewed to undermine a woman's legal, constitutionally protected rights.

I am going to go a step further and offer an amendment that would actually reduce the number of abortions in America and ensure that low-income, pregnant women have access to health care that will reduce complications in their pregnancies and ensure healthy outcomes.

Like any debate on a sensitive issue, the debate on this measure is complicated. But it really comes down to one simple question: Who decides what is right for a woman's health? The woman and her doctor, or Senators she has never met? Who decides whether or not a woman will ever be able to have children? The woman herself, or a Senator who knows nothing about her?

When you ask Americans who they believe should be making health care decisions, the answer is overwhelmingly clear: The patient should decide.

We all bristle at the idea that an insurance company or an HMO would stand in the way of a doctor or patient making a decision about a medical test. Yet on this, the most sensitive and private and difficult decision a woman may ever face, the Senate is about to insert itself between a patient, her doctor, her family, and her faith.

This measure would gag a doctor who is about to offer a woman a choice in a potentially life-threatening or health-impairing decision. It would substitute a woman's own judgment about her life and her family for the judgment of the Senate leadership.

With all due respect, the Senate leadership does not know what is best for that woman, and neither do I, nor any other elected official. The Government should not be making a woman's health decisions for her. She should make them for herself, in consultation with her family, her doctor, and her faith.

Mr. President, I will have much more to say about this and the amendment I intend to offer, but again, I have to say that I find it so amazing this Senate would be so out of sync with the fear and the anxiety in this country not because of some late-term abortion bill that is brought out for political reasons, but because our country is on the edge of a war that could change things for a long time to come. We are on the edge of a war where we have thousands of young people standing ready to do what this President asks. We are on the edge of a war where no one knows what the consequences will be, and at the same time, at home, we are facing an economy that is truly becoming one in which many people fear for their job, their health care, their ability to send their kids to school, and the future of this country.

Those are the issues we should be debating tonight, Mr. President, not this issue. But we are here. We will debate it, and we will make the case that it is deceptive, it is extreme, and it is unconstitutional.

I thank the Chair, and I yield the floor. I retain the remainder of our time.

Mr. SANTORUM. Mr. President, how much time does each side have remaining?

The PRESIDING OFFICER. The Senator from Pennsylvania has 3 minutes 14 seconds. The Senator from California has 16 seconds.

Mr. SANTORUM. Mr. President, I ask the Senator from Washington if she would characterize something that has, in the most recent poll, 70 percent support among the American people as an extreme agenda item?

Mrs. MURRAY. Mr. President, I will make the case that this is deceptive, it is extreme, it is unconstitutional, and I will make that case over the following days.

Mr. SANTORUM. So the Senator believes something that has 70 percent support among the American people is extreme. OK, I am interested in hearing that.

Mrs. MURRAY. If the Senator asks me a question, I will be happy to respond.

Mr. SANTORUM. I think you did. You reiterated your position you believe this is an extreme piece of legislation even though 70 percent of the American people support it.

Mrs. MURRAY. Mr. President, I answer that I think most Americans do not know the reality of the language of the bill that is being presented to them, and I will make that case.

Mr. SANTORUM. This legislation has been around 7 years. This has been written about, described in detail in the national press, and I do not think we do the American public a great service by suggesting they cannot read and understand very clearly what this procedure is all about. I would argue probably the 30 percent who have not heard of it have not read in detail exactly what goes on. I make the other argument. But 70 percent is a pretty good start on our side.

Second, the Senator says the Government should not get involved in regulating the doctor-patient relationship when it comes to women's health. Did the Senator support the female genital mutilation bill which bans a medical procedure that interferes with the doctor-patient relationship between a woman and her doctor?

Mrs. MURRAY. That does not interfere with the doctor-patient relationship, I would argue with my colleague, and I am happy to have that debate. Senator REID from Nevada has been adamant about that issue, and I think it

is totally separate from what we are discussing this evening.

Mr. SANTORUM. This is a banned medical procedure that affects the reproductive system of a woman. I argue that you can make the case and you will ban things you agree with, but you do not want to ban things you do not agree with. That does not mean the Congress does not have a right, when we find something to be abhorrent, that we believe is not in the best interest of the medical profession and women in this country and particularly, obviously, the child in the process of being born, to step forward and ban what we believe are harmful and destructive procedures. That is what we have done in this case.

The Senator from Washington spent 90 percent of the time talking about anything but this bill, which leads me to the old saw when I was a lawyer: If you cannot argue the facts, argue the law; if you cannot argue the law, pound the table. In this case, we are pounding the table.

The PRESIDING OFFICER. The Senator from California has 16 seconds.

Mrs. BOXER. Mr. President, we are talking about polls. I will give you a very late poll. This is an L.A. Times poll of the Nation: 45 percent think we ought to be working on strengthening the economy; 28 percent, fighting terrorism; 26 percent, dealing with health care costs; at that time, 25 percent dealing with Iraq; 18 percent, protecting Social Security; 7 percent dealing with tax cuts; and 7 percent dealing with late-term abortion.

The people are exactly where the Senator from Washington says, but we are willing to debate this and we are looking forward to a good debate.

I yield the floor.

EXECUTIVE SESSION

NOMINATION OF GREGORY L. FROST TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO

The PRESIDING OFFICER. All time having expired, under the previous order, the Senate will go into executive session and proceed to the consideration of Executive Calendar No. 39, which the clerk will report.

The legislative clerk read the nomination of Gregory L. Frost, of Ohio, to be United States District Judge for the Southern District of Ohio.

The Senator from Ohio.

Mr. DEWINE. Mr. President, in a moment we will be voting on the nomination of Judge Gregory Frost to be a United States District Court Judge for the Southern District of Ohio. I have had the opportunity of knowing Judge Frost for many years. He is a man of great honor and integrity, and I ask my colleagues to vote for this very fine man. Judge Frost has been on the Licking County bench for 19 years, 7 as municipal court judge and 12 as common pleas court judge. Judge Frost will make an excellent district court judge.

I thank my colleagues.

Mr. LEAHY. Mr. President, tonight the Senate will vote to confirm Judge Gregory Lynn Frost to the United States District Court for the Southern District of Ohio. This will be the 105th confirmation of a lifetime Federal judicial appointment by President George W. Bush, the fifth so far this year. He is also the second District Court nominee confirmed for Ohio this year, following the confirmation of Judge Adams to the District Court for the Northern District last month, and the third within the last year. Last May, the Senate also confirmed Judge Thomas Rose to the vacancy on the U.S. District Court for the Southern District of Ohio. With the confirmations of Judge Frost, we will have filled all of the vacancies on the Federal trial courts in Ohio.

Federal judicial vacancies remain under the level—67—that Senator Hatch termed ''full employment'' in the Federal courts during the years before 2000 when President Clinton's nominees were being considered by the Republican majority in the Senate at a rate of 38 per year. Of course, last year the Democratic Senate majority proceeded to bring vacancies down by confirming 72 of President Bush's nominations, a rate almost double that maintained when the roles were reversed.

Judge Frost currently serves the people of Ohio as a Licking County Court Judge in Newark, Ohio. Judge Frost is a graduate of Wittenberg University (B.A. 1971) and Ohio Northern University Law School (J.D. 1974). He is strongly supported by Senator DEWINE, who shepherded this nomination through the Judiciary Committee and now to the Senate floor for prompt consideration.

After graduating from law school, Frost was appointed to be an Assistant Prosecuting Attorney for the Licking County Prosecuting Attorney's Office. In 1978, Frost joined the law firm of Schaller, Frost, Hostetter & Campbell in Newark, Ohio as a partner. He was appointed in 1979 by Mayor Chet Geller to be an Ohio Civil Service Commission clerk. In the early 1980's, he was elected a Licking Counting Municipal Court Judge. In 1990, Judge Frost was elected to a 6-year term on the Licking County Common Pleas Court and has been re-elected twice, most recently in November 2002. According to this Senate Questionnaire, he has no experience in Federal court.

Judge Frost is a current or former member of numerous charitable, civic and social organizations. Judge Frost is also a current member of the Newark Elks Club, which currently bases membership on being ''a citizen of the United States over the age of 21 who believes in God.'' Judge Frost states in his Senate Questionnaire that, for four years, he had been a member of the Newark Elks Club, along with the Newark Moose Lodge and Newark Maennerchor, however, he states that, ''when it became apparent that those organizations discriminated against women in their membership practices, I resigned. In 2000, I was asked to re-apply for membership in the Newark Elks Lodge. I advised that organization that I could not subscribe to their membership tenets as a result of their continued discrimination against women. In part, because of my position on this issue, I am proud to say that the Newark Elks Lodge has changed its practices and now permits women as full members.'' Judge Frost belongs to the Moundbuilders Country Club, a private golf club that does not discriminate in its membership.

The Committee received a letter of support for Judge Frost from the Ohio Employment Lawyers Association, a nonprofit organization that represents individual employees concerning employment and labor matters. The Ohio Employment Lawyers Association writes that Judge Frost ''is an example of how a jurist should set aside personal and partisan political beliefs to provide justice.'' Supporters of Judge Frost's nomination to the District Court also include the Ohio Academy of Trial Lawyers and Peter W. Hahn, a Democrat who has practiced before Judge Frost, writes that ''Judge Frost has the unique ability and temperament to adjudicate complex cases while maintaining civil and professional decorum both inside the courtroom and in chambers.''

I congratulate Judge Frost and his wife on his confirmation.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Gregory L. Frost, of Ohio, to be United States District Judge for the Southern District of Ohio? The clerk will call the roll.

The bill clerk called the roll.

Mr. FRIST. I announce that the Senator from Kentucky (Mr. MCCONNELL), the Senator from Alaska (Ms. MURKOWSKI), and the Senator from Oregon (Mr. SMITH) are necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New Jersey (Mr. CORZINE), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN), and the Senator from New York (Mr. SCHUMER) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''aye''.

The PRESIDING OFFICER (Mr. ALEXANDER). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 91, nays 0, as follows: